

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MATTIE CARD,

Plaintiff,

Case No. 08-11598

vs.

David M. Lawson
United States District Judge

JP MORGAN MORTGAGE
ACQUISITION CORPORATION,

Michael Hluchaniuk
United States Magistrate Judge

Defendant.

**REPORT AND RECOMMENDATION FOR
DISMISSAL FOR FAILURE TO PROSECUTE**

Plaintiff, Mattie Card, filed a complaint in this Court on April 14, 2008 against defendant, JP Morgan Mortgage Acquisition Corporation (JP Morgan). (Dkt. 1). District Judge David M. Lawson referred this matter to the undersigned for all pre-trial purposes. (Dkt. 2). Plaintiff's application to proceed *in forma pauperis* was granted on May 12, 2008. (Dkt. 2, 4). On June 11, 2008, after it was served with the complaint, defendant filed a motion for more definite statement. (Dkt. 9).¹ On June 18, 2008, the Court ordered plaintiff to respond to

¹ Should the Court adopt this Report and Recommendation, defendant's motion for more definite statement will obviously be moot.

defendant's motion by July 7, 2008. (Dkt. 11). The notice to respond was sent to plaintiff's address as listed on her complaint. *Id.* On June 25, 2008, the notice sent to plaintiff was returned to the Court as "undeliverable." (Dkt. 12). Plaintiff has not provided any other address to the Court and has not responded to defendant's motion.

The Federal Rules of Civil Procedure provide that, if a plaintiff fails to prosecute an action or comply with Federal Rules or with orders of the Court, a defendant may move to dismiss the action. [Fed.R.Civ.P. 41\(b\)](#). While defendant in this case has not so moved, the Court's authority to dismiss an action *sua sponte* for lack of prosecution is an inherent power, not governed by rule or statute, but by the control necessarily vested in the Court to manage its own affairs to achieve orderly and expeditious disposition of cases. [Link v. Wabash R. Co., 370 U.S. 626, rehearing denied, 371 U.S. 873 \(1962\)](#); *see also*, [Shotkin v. Westinghouse Elec. & Mfg. Co., 169 F.2d 825 \(10th Cir. 1948\)](#) (Where plaintiff had failed to prosecute action with reasonable diligence, the court may dismiss the action on defendant's motion or on its own motion.); [Cintron-Lorenzo v. Departamento de Asuntos del Consumidor, 312 F.3d 522 \(1st Cir. 2002\)](#) (The district court, as part of its inherent power to manage its own docket, may dismiss a case *sua sponte* for any of the reasons prescribed in Rule 41, including lack of diligent prosecution.).

Further, the Court may do so with or without notice to the parties. [*Rogers v. Kroger Co.*, 669 F.2d 317 \(5th Cir. 1982\)](#).

As set forth above, plaintiff has had no contact with the Court since her initial filing of the complaint on April 14, 2008. Nearly three months have passed since the complaint was filed and plaintiff's response to defendant's motion is now two weeks overdue. Given that the address provided to the Court is apparently invalid, and that plaintiff has not provided an updated address to the Court, it is not reasonably anticipated that plaintiff will respond to defendant's motion or otherwise pursue her claims. Under these circumstances, the Court concludes that plaintiff has failed to diligently prosecute this action, and that dismissal, without prejudice, pursuant to Rule 41(b) is appropriate. Based on the foregoing, the undersigned **RECOMMENDS** that this matter be **DISMISSED** *sua sponte* **WITHOUT PREJUDICE** pursuant to Rule 41(b) for plaintiff's failure to diligently prosecute her claims.

The parties to this action may object to and seek review of this Report and Recommendation, but are required to file any objections within 10 days of service, as provided for in [28 U.S.C. § 636\(b\)\(1\)](#) and Local Rule 72.1(d)(2). Failure to file specific objections constitutes a waiver of any further right of appeal. [*Thomas v. Arn*, 474 U.S. 140 \(1985\)](#); [*Howard v. Sec'y of Health and Human Servs.*, 932 F.2d](#)

[505 \(6th Cir. 1981\)](#). Filing objections that raise some issues but fail to raise others with specificity will not preserve all the objections a party might have to this Report and Recommendation. [Willis v. Sec'y of Health and Human Servs., 931 F.2d 390, 401 \(6th Cir. 1991\)](#); [Smith v. Detroit Fed'n of Teachers Local 231, 829 F.2d 1370, 1373 \(6th Cir. 1987\)](#). Pursuant to Local Rule 72.1(d)(2), any objections must be served on this Magistrate Judge.

Within 10 days of service of any objecting party's timely filed objections, the opposing party may file a response. The response shall not exceed 20 pages in length unless such page limit is extended by the Court. The response shall address specifically, and in the same order raised, each issue contained within the objections by motion and order. If the Court determines any objections are without merit, it may rule without awaiting the response to the objections.

Date: July 23, 2008

s/Michael Hluchaniuk
Michael Hluchaniuk
United States Magistrate Judge

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2008, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following: William C. Kelley and Gerald A. Pawlak, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: Mattie Card, 19918 Cooley Street, Detroit, MI 48219.

s/James Peltier

James Peltier

Courtroom Deputy Clerk

U.S. District Court

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